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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

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IN THE MATTER OF THE GENERAL)  
DETERMINATION OF ALL THE ) PETITION FOR CLARIFICATION  
RIGHTS TO THE USE OF WATER, ) OF ORDER GOVERNING PAST  
BOTH SURFACE & UNDERGROUND, ) DISTRIBUTION PRACTICES  
WITHIN THE DRAINAGE AREA OF )  
THE UINTAH BASIN IN UTAH. ) Civil No. 3070

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This Court, by Order dated July 19, 1972, directed that the distribution of water on the Duchesne River System for the 1972 irrigation season be in accordance with the pre-1971 distribution practices. At the direction of the Court, the past and present Water Commissioners on this river system prepared a schedule which reflected the past distribution practices. A copy of that schedule was attached to and made a part of said Order as Appendix "B". Paragraph 2.d. of that schedule provided that:

Certificated water rights whose certificates contain no limitation in acre-feet but only call for diversion of a given flow to a certificated acreage have been delivered the full certificated flows as long as there was water to satisfy the priority of their water right. When the water supply dropped and priority cuts were called for, these rights were cut on priority.

The Uinta Basin Irrigation Company is the owner of Applications to Appropriate Nos. 3306 and 3848a, which represent a total flow of approximately 165 c.f.s. Application No. 3306 was approved June 12, 1912, and Application No. 3848a was approved January 31, 1957. Since the approval of these

Applications, the Company has made a gradual and progressive development of the water and, in 1962, filed Elections on said Applications. The effect of these Elections is to certify to the State Engineer that the Company has constructed all of the necessary works, diverted the water, and placed it to beneficial use. Once this has been field-checked by representatives of the State Engineer and found to comply with the Application to Appropriate, the State Engineer recommends to the Court, as a part of the General Adjudication of Water Right proceedings, confirm the Applicant's water right for the amount of beneficial use which the State Engineer determined. This procedure is the equivalent of an Applicant submitting Proof of Appropriation and receiving a Certificate in accordance with Section 73-3-16, Utah Code Annotated 1953, as amended.

The State Engineer has been advised by Leo Brady, the past Water Commissioner on the Duchesne River System, that the practice which has developed over the years among the users is to limit approved—but uncertificated applications to three acre-feet per acre when the River is placed on a duty schedule. Further, it has been the general practice that once a water right is certificated the owner is then delivered the flow which is provided for in the certificate if there is no acre-foot limitation provided in the certificate itself. Since the Uinta Basin Irrigation Company has now filed an Election, in lieu of appropriation, on said Applications, the Company has requested the State Engineer to instruct the Water Commissioner to remove said Applications from the three acre-foot delivery schedule and to deliver the Company their water on a continuous

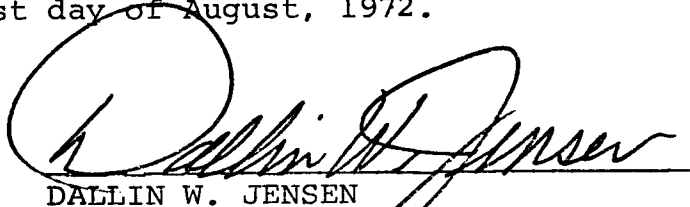
flow basis without any acre-foot limitation. The Company asserts that the filing of the Election is the equivalent of receiving a Certificate of Appropriation and, hence, they fall within the provisions of Paragraph 2.d. of the delivery schedule since there is no acre-foot limitation in their Applications.

The State Engineer has been further advised by Leo Brady that even though an Election was filed on this Application in 1962, the Company has nevertheless been limited to three acre-feet per acre when a duty schedule has been imposed on the River System. Mr. Brady pointed out that there are other applicants following in the same category as the Uinta Basin Irrigation Company, but that the pre-1971 practice had been to continue to place those applications upon which an election had been filed on the three acre-foot delivery schedule. The State Engineer, at a meeting attended by officials of the Uinta Basin Irrigation Company, advised them that since the existing Court Order specified that the waters of the Duchesne River System are to be distributed in accordance with the pre-1971 irrigation practices, he could not instruct the Water Commissioner to deliver the water in any other manner until there has been a clarification of this problem. He further advised the Company that this clarification could only be accomplished after Notice to the interested parties and a Hearing before this Court.

WHEREFORE, the State Engineer respectfully requests that the Court, at the earliest practicable date, set this matter for Hearing and that it be determined, as a result of the information presented at the Hearing, whether or not it would be proper and equitable to modify the existing Order

governing the distribution practice on the Duchesne River System for the remainder of the 1972 irrigation season, and to deliver additional water to the Uinta Basin Irrigation Company.

Dated this 1st day of August, 1972.

A handwritten signature in black ink, appearing to read "Dallin W. Jensen", is written over a horizontal line. The signature is stylized with a large, circular initial 'D'.

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